

REMARKS

In the Office Action, the Office indicated that claims 9 through 22 are pending in the application and the Office rejected all of the claims.

The §101 Rejection

On page 2 of the Action, the Office rejected claims 16-22 under 35 U.S.C. §101 as being directed to non-statutory subject matter. Applicant has amended claims in accordance with the Office's suggestion to specify that the computer-readable program code performs the claimed steps when executed on a processor. Accordingly, the Office is respectfully requested to reconsider and withdraw the rejection of claims 16-22 under 35 U.S.C. §101.

The §103 Rejections

On page 3 of the Action, the Office has rejected claims 9-13 and 16-20 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0062245 to Niu in view of U.S. Patent Application Publication No. 2001/0014868 to Herz. On page 5 of the Action, the Office rejected claims 14-15 and 21-22 under 35 U.S.C. §103(a) as being unpatentable over Niu in view of Herz, and further in view of U.S. Patent Application Publication No. 2003/0028518 to Mankoff.

The Present Invention

The present invention applies gaming theory and well-understood sales processes and techniques to allow the operator of an interactive sales medium to control what is displayed to a

user of the medium in a manner that signals their intentions (e.g., looking for a lower price, looking for a particular incentive, etc.) so that the “strategies” being used by the consumer can be identified and exploited. In particular, the present invention involves the identification of all selections (i.e., pathways) offered by an interactive content-delivery system (e.g., a website) and presents users of the system with incentives based on the identified probabilities. Selections or pathways less “traveled” are more heavily incentivized than are paths more frequently traveled, to “lure” users towards the less traveled selections. Specifically, the claimed invention identifies the probabilities of selection for all possible selections on the website, and designates certain of the selections as low-probability selections. The low-probability selections are then assigned higher-level incentives than those that are higher probability selections.

In a preferred embodiment, “negative incentives” (e.g., the offering of an incentive that is identified to the user as one that will be withdrawn if not acted upon within a predetermined amount of time) are presented as further encouragement for a user to take a particular pathway. This aspect of the invention is claimed, for example, in claim 14.

As stated in Applicant’s Appeal Brief, with respect to Niu, nowhere in Niu is there any discussion or disclosure of going through *each selection possibility* on an interactive content-delivery system (i.e., *each pathway available on a website*), identifying the probabilities of selection of *each selection possibility*, designating certain of the selections as low probability selections, and then presenting higher incentives to users who purchase the lower-probability selections. The Examiner asserts that paragraphs 68-78 of Niu teach this. They do not. These sections of Niu are only concerned with selections between “X and Y” products, items, etc. They are not concerned with those outside the “X and Y” range, and thus they are not concerned with *each selection possibility* or *each pathway available on a website*.

Applicant acknowledges that Niu looks at calculated probabilities that a user will (a) leave a website or (b) make a purchase on the website, to decide whether or not to generate real-time promotions to the user, and that Niu also uses the frequency of visits and time of visits by the user to determine if a promotion should or should not be presented to the user (see paragraph [0043] of Niu). This “leave or purchase” probability is based solely on keystroke data of the user and is not at all based on analyzing probability for all possible selections as is claimed. While this may be helpful and remotely similar to the concept claimed herein, there is in no way any teaching or suggestion of “identifying probabilities of selection with respect to all selections offered by said interactive content-delivery system” as is claimed herein. This claimed feature is neither taught nor suggested by Niu, Herz, nor a combination of the two.

As the Examiner admits, Niu also does not teach the claimed aspect of “designating certain of said selections as low probability selections based on the identified probabilities” nor “whereby said low probability selections receive higher-value incentives than selections having higher probability of selection than said low probability selections”. The Examiner asserts that Herz teaches that this is an “old and well known” concept.

As noted above, Herz fails to supply the claimed identification of probabilities of selection with respect to all selections offered by the content delivery system, a feature also lacking in Niu. Thus, further consideration of Herz is unnecessary. Applicant reiterates its position that Herz cannot properly be characterized as assigning higher incentives to low-probability selections. At best, the portion of Herz relied upon by the Examiner can be characterized as teaching the providing of generous offers to incent *any* customer to purchase something, or to change purchasing patterns (e.g., buy economy size instead of regular size).

Nowhere does Herz discuss analyzing the probability that a *particular* user will or will not make

a particular selection and then, based on that analysis, assign higher incentives to low-probability selections.

Likewise, Mankoff neither teaches nor suggests the above claimed features neither taught nor suggested by Niu or Herz.

For the above reasons, the present invention patentably defines over Niu, Herz, Mankoff, and any combination thereof; thus, claims 9-22 (i.e., the independent claims as well as the claims depending therefrom) are in condition for allowance.

Conclusion

The present invention is not taught or suggested by the prior art. Accordingly, the Office is respectfully requested to reconsider and withdraw the rejection of the claims. An early Notice of Allowance is earnestly solicited.

The Commissioner is hereby authorized to charge any fees associated with this communication to applicant's Deposit Account No. 09-0457.

Respectfully submitted

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Date

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